IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISIDICTION

WRIT PETITION NO.412 OF 2005

Dr.Ramesh Kanuba Doiphode and Ors. ..Petitioners

Vs.

Suresh Kanuba Doiphode and Ors. ..Respondents

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Mr.D.K.Ghaisas with I.R.Singh with T.R.Patel for Petitioners
Mr.S.V.Parkhe with Mr.M.V.Savant for Respondetns

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CORAM : B.H.MARLAPALLE,J.

DATE : FEBRUARY 9,2005

P.C.:

1. Heard Mr.Singh with Patel, the learned counsel for the petitioners and Mr.Parkhe and Mr.Savant, the learned counsel for the respondents.

2. Rule. Respondents waive service of notice of Rule.

3. Rule taken up for final hearing forthwith more so, because S.C.Suit No. 1195 of 2004, has been directed by this Court to be decided before 31.12.2005.

4. Appeal from Order No. 961 of 2004 was disposed of by this Court by an order dated 30.11.2004 by setting aside the order passed in Notice of Motion No. 4187 of 2004. It was claimed by the defendants that they were thrown out of the premises which allegedly form part of the suit property and the defendants had claimed that they were infact, in possession before the Court Commissioner had visited the suit premises. This Court, therefore, thought it appropriate to restore the defendants' possession without prejudice to the final outcome of the pending suits. The trial of the suit was thus expedited and was directed to be decided by 31.12.2005.

5. The petitioners-plaintiffs moved fresh Chamber Summons for amendment of the plaint and when it came before the Court below on 22.12.2004, the learned Judge rejected the prayer for taking out Chamber Summons and more particularly, by observing that the order passed by this Court in Appeal from Order No. 961 of 2004 had directed to decide the main suit by 31.12.2005. No further reasoning was given while rejecting the Chamber Summons.

6. The copy of the schedule attached to the Chamber Summons is annexed to the petition memo and if regards be had to the averments set out in the said

schedule, it is evident that the averments made in para 5(b) to para 5(h) as well as proposed additions to para 14 and the prayer clause, have originated from the order passed by this Court in Appeal from Order No. 961 of 2004. The averments in para 5(a) to the schedule need not be considered to be relevant. These averments if incorporated in the plaint, would not in any way, affect the defendants' right to file additional written statement and if the same is directed to be filed within a specific time limit, the trial of the suit as made time bound by this Court, could not be affected or could not be delayed. The view taken by the trial Court in rejecting the Chamber Summons without any further reasons is unsustainable. Though the original relief prayed for in the suit is regarding permanent injunction, on account of the order passed by this Court in A.O.No. 961 of 2004, the further relief of possession of the part of the suit premises is sought to be incorporated in the plaint and thus proposed amendment cannot be held to be irrelevant or by way of an after thought. Hence, this petition succeeds partly.

7. In the result, Chamber Summons is partly allowed by granting liberty to amend the plaint so as to incorporate para 5(b) to para 5(h) and para 14 and the proposed prayer clause. The defendants shall

file their amended written statement within two weeks from today. The suit be heard and decided on its own merits by 31.12.2005.

8. Rule made absolute but without any order as to costs.

. Certified copy expedited.

. Writ to go to the trial Court forthwith

[B.H.MARLAPALLE,J.]